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No. 684

In the Supreme Court of the United States

OCTOBER TERM, 1942

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion and supplemental memorandum of the district court (R. 22–30) are not officially reported. The opinion of the circuit court of appeals (R. 47–52) is reported in 131 F. (2d) 936.

JURISDICTION

The judgment of the circuit court of appeals was entered December 7, 1942 (R. 53). The petition for a writ of certiorari was filed January 29, 1943, and granted March 15, 1943. The jurisdiction of this Court rests on Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States, in a suit brought after the expiration of the trust period, may recover taxes wrongfully assessed against a tax-exempt Indian allottee, notwithstanding the fact that the taxes were "voluntarily" paid by the allottee, in some cases before and in others after the expiration of the trust period, and notwithstanding the fact that a state court of Minnesota had previously sustained a demurrer to a complaint filed by the allottee for their recovery.

STATUTES INVOLVED

The pertinent provisions of the General Allotment (Dawes) Act of February 8, 1887, 24 Stat. 388 (25 U. S. C. 348); the Nelson Act of January 14, 1889, 25 Stat. 642; the first Clapp Amendment of June 21, 1906, 34 Stat. 325; and the second Clapp Amendment of March 1, 1907, 34 Stat. 1034, are printed in the Appendix, *infra*, pp. 27–30.

STATEMENT

In the post-Civil War period, the various bands of Chippewa Indians occupied in communal ownership twelve reservations in the State of Minnesota. *Chippewa Indians* v. *United States*, 301 U. S. 358, 361. As homestead lands became scarce in the public land states of the West, white

men became interested in these large tracts of valuable agricultural and timber lands little used by the Chippewas, with the result that Congress in 1889 directed the President to appoint three commissioners "to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill" individual allotments. Nelson Act of January 14, 1889, sec. 1, 25 Stat. 642. Congress further provided (sec. 3) that members of the various bands, except those of the Red Lake Reservation, should "be removed to and take up their residence on the White Earth Reservation, and * * * be allotted lands in severalty" in conformity with the General Allotment (Dawes) Act of February 8, 1887, 24 Stat. 388. Section 5 of that Act contained a declaration that the United States would hold the allotment in trust for the benefit of the individual allottee for a period of twenty-five years and at the expiration of said period convey the land to said Indian or his heirs "in fee, discharged of said trust and free of all charge or incumbrance whatsoever."

This proposal by Congress for a further cession of tribal lands, the substitution of individual for tribal ownership, and the sale of surplus lands not needed for allotment purposes, was not enthusiastically received by the Chippewas. House Ex. Doc. No. 247, 51st Cong. 1st sess. (Ser. No. 2747), pp. 1, 66–193 (1890). The commissioners persisted, however, in the negotiations. They explained to the Indians the provisions of the Nelson Act of 1889 and the Dawes Act of 1887. *Ibid.*, pp. 86, 153, 157, 165. Buttressed by this Court's construction of similar language in the case of *The Kansas Indians*, 5 Wall. 737, 760, and an opinion of the Attorney General construing the very provision in question (19 Op. A. G. 161, 166–169 (1888)), the commissioners assured the Indians that their allotments would not be taxed for twenty-five years. House Ex. Doc. No. 247, 51st Cong. 1st sess. (Ser. No. 2747), pp. 93, 103, 104, 138; cf. pp. 97, 112.[1] Having been told that the Nelson Act would "be carried out in accordance with the explanations" (*ibid.*, p. 110), the Indians finally agreed to relinquish their large communal holdings, to accept individual trust allotments, and to permit the sale of surplus lands to white settlers. *Ibid.*, pp. 1–2, 27–66. On March 4, 1890, the President approved each instrument of cession

[1] This construction of Section 5 of the General Allotment (Dawes) Act of 1887 was subsequently confirmed by this Court in *United States* v. *Rickert*, 188 U. S. 432, 438–439.

and transmitted to Congress a statement of his approval, together with the commission's report and related documents. Congress in turn indicated its approval by the Act of August 19, 1890, 26 Stat. 336, 357, making appropriations for the survey, allotment, and sale of the lands thus ceded. See *Chippewa Indians* v. *United States*, 301 U. S. 358, 364–366.

During the next two decades the United States proceeded to allot to the duly enrolled members of the several Chippewa bands, including mixed bloods, specific tracts of land on the White Earth Indian Reservation in Mahnomen, Becker, and Clearwater Counties (see R. 17–18). In the trust patents issued to each of these allottees, the United States agreed to hold the lands in trust for a period of twenty-five years and then to convey them to the allottees in fee, discharged of said trust and "free of all charge or encumbrance whatsoever" (R. 18, 23).

In 1906 and 1907, prior to the expiration of the 25-year trust periods, Congress passed two statutes, generally referred to as the first and second Clapp Amendments, which declared that "all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation * * * heretofore or hereafter held by adult mixed-blood Indians, are hereby removed." Act of June 21, 1906, 34 Stat. 325, 353;

Act of March 1, 1907, 34 Stat. 1034. The county taxing authorities promptly took advantage of these statutes and placed on the tax rolls all allotments held by adult mixed-blood Indians (see R. 18–19).

However, in *Choate* v. *Trapp*, 224 U. S. 665, decided in 1912, this Court held that neither the United States nor the State of Oklahoma could abrogate a 21-year tax exemption promised the Choctaw Indians in the Atoka Agreement of 1897 (ratified by the Curtis Act of June 28, 1898, 30 Stat. 495, 505). The Indians having surrendered their tribal holdings in partial reliance upon the promise of a 21-year tax exemption, this Court concluded that individual Choctaw allottees had acquired a vested right protected by the Fifth Amendment, good against both the United States and the State of Oklahoma, and that therefore the exemption survived a 1908 statute removing restrictions on alienation in the case of certain mixed-blood Indians and declaring that all land from which restrictions had been removed should be "subject to taxation." Act of May 27, 1908, sec. 4, 35 Stat. 312.[2]

Because the promises made to the Chippewas in the Nelson Act of 1889 were markedly similar to those made to the Choctaws in the Curtis Act of

[2] For subsequent decisions by this Court to the same effect, see *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363.

1898, the United States Attorney was instructed in 1914 to bring a class suit to enjoin the tax officials of Becker County from assessing taxes against Chippewa allotments prior to the expiration of the 25-year period specified in the original trust patents. The district court granted the requested relief and the circuit court of appeals affirmed, on the ground that the 25-year tax exemption promised the Chippewas survived the repudiatory language of the Clapp Amendments, just as the promise in the Atoka Agreement had survived the 1908 Act. *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8). And in succeeding years a number of successful suits were brought by the allottees and by the United States to recover previous collections and to prevent other assessments. See, *e. g.*, *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).

The few remaining tax claims were finally "lumped together" in the present suits which the United States brought in 1940 against Mahnomen, Becker, and Clearwater Counties for the cancellation of all taxes levied prior to the expiration of the 25-year periods, and for refunds in those instances where the taxes were paid by the allottees (R. 2–7, 22).

Seven parcels were included in the complaint filed by the Government in the Mahnomen County case (R. 3–4). Parcels 1, 3, and 5 were dismissed

with the Government's consent when it developed that taxes levied against parcel 1 before and after the expiration of the 25-year period in 1927 had been subsequently compromised by the allottee for less than the amount of the taxes assessed after 1927; that the taxes levied against parcel 3 had "been abated and cancelled upon application" to the county; and that the allottee of parcel 5 had lost his tax exemption by applying for and receiving a fee simple patent (R. 18–19). The county stipulated that parcels 2, 4, and 6 were not legally taxable prior to the expiration of the 25-year periods (R. 12–13) and did not seriously question the Government's right to have such taxes and enforcement proceedings declared illegal and void. The only substantial contest arose in connection with parcel 7. There the United States issued a trust patent to Isabelle Garden, a mixed-blood Chippewa, in December 1902. The county stipulated that this tract "was not legally taxable prior to the year 1928". (R. 13.) Taxes were nevertheless levied against this allotment commencing in 1911, the year Isabelle Garden reached her majority. Taxes for the period from 1911 to 1921, inclusive ($405.97), were paid in full by the allottee prior to 1922. The allottee discharged the taxes for 1922 to 1925 and for 1926 to 1934 by the purchase in 1936 of State Assignment Certificate No. 76 in the amount of $33.22 and State Assignment Certificate No. 232 in the amount of $145.93. (R. 13–15, 19–20.)

The cases against all three counties were submitted on agreed statements of fact (R. 22, 26). The trial court entered judgments ordering the cancellation of all taxes levied during the 25-year periods, the restoration to the allottees of lands sold for nonpayment of taxes, and the refund of all taxes levied and paid before the expiration of the 25-year periods. It refused to order a refund of taxes levied before, but not paid until after, the 25-year period expired. (R. 31–33.)

Becker and Clearwater Counties acquiesced in these judgments. Mahnomen County, however, elected to appeal from that portion of the judgment directing it to refund the taxes paid between 1911 and 1921 ($405.97) on parcel 7. The Government then filed a cross-appeal from that portion of the judgment denying recovery of taxes levied on parcel 7 between 1922 and 1925[3] and discharged by the allottee in 1936 ($33.22). The circuit court of appeals held that the United States was entitled to recover all taxes in question, whether paid before or after the expiration of the 25-year period (R. 46–52).

[3] Since her allotment "was not legally taxable prior to the year 1928" (R. 13), the allottee should not have been required to pay the taxes for 1926 and 1927. But inasmuch as the taxes for 1928 to 1934 (which she was legally required to pay) exceeded the amount she actually paid for State Assignment Certificate No. 232 covering the years from 1926 to 1934, the United States has made no claim for any refund for the years 1926 and 1927.

I

st patents which it issued to the Chip-
is, pursuant to the General Allotment
t of 1887 and the Nelson Act of 1889,
States expressly agreed to hold the
trust for a period of twenty-five years
convey them to the allottees in fee,
charge or incumbrance whatsoever."
sly the foregoing provision rendered
nts nontaxable. *United States* v.
U. S. 432; *Carpenter* v. *Shaw*, 280 U.
cf. *The Kansas Indians*, 5 Wall. 737,
view of the fact that the Chippewa
nquished large areas of land and re-
White Earth Indian Reservation in
this promise that their allotments
taxed for twenty-five years, the above-
sion has been uniformly construed as
pon the Indian allottees a vested 25-
nption which may not be revoked with-
sent. *Morrow* v. *United States*, 243
C. A. 8); *United States* v. *Spaeth*, 24
(Minn.); cf. *Choate* v. *Trapp*, 224 U.
nter v. *Shaw*, 280 U. S. 363. In fact,
necedes that the Chippewa allottees en-
ar tax exemption, of which they could
ved without their consent.

II

The Clapp Amendments of 1906 and 1907, effective as to Isabelle Garden when she reached her majority in 1911, removed the restrictions on alienation, but they did not destroy her vested tax exemption. *Choate* v. *Trapp*, 224 U. S. 665, 673; *United States* v. *Waller*, 243 U. S. 452; *United States* v. *Spaeth*, 24 F. Supp. 465, 468–469 (Minn.). Since Isabelle Garden was free after 1911 to manage her allotment as she saw fit, it is incorrect to suggest that she "voluntarily" paid taxes in order to acquire a right of alienation which was already hers by virtue of the Clapp Amendments. The allottee herself sued for their recovery in 1923. Moreover, tax payments made by an allottee faced with the threat of having her lands sold for unpaid taxes are not "voluntary payments" within the rule that taxes voluntarily paid cannot be recovered. *Ward* v. *Love County*, 253 U. S. 17, 23; *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733, 735 (C. C. A. 9); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9). Furthermore, when the United States brings suit to recover moneys wrongfully exacted from an Indian allottee and to vindicate a federal right, it is not bound by state statutes of limitations, statutes governing protests, or the like. *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55, 57 (C. C. A. 10).

III

The duty of the United States to have its guarantee of tax immunity respected is a continuing obligation even though restrictions on alienation have been removed and the allottee has been otherwise emancipated. *Cramer* v. *United States*, 261 U. S. 219, 232; *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. The Government's duty to recover the taxes unlawfully exacted from the allottee in derogation of a federal exemption is based upon the legal relation of trusteeship and springs from the obligation contained in the terms of the trust to preserve the land so that at the end of twenty-five years it can be passed to the beneficiary "free of all charge or incumbrance." *Morrow* v. *United States*, 243 Fed. 854, 859 (C. C. A. 8); *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (E. D. Wash). Any taxes which were assessed prior to 1928 and which the allottee had to discharge then or thereafter in order to obtain a free and unencumbered title were unlawful exactions which impinged upon the allottee's vested tax exemption. The fact that the suit for their recovery was not brought until after 1928 is immaterial. The United States may at any time invoke the aid of the courts "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota*, 270 U. S. 181, 194; *United States* v. *Rickert*, 188 U. S. 432,

444; *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

IV

The interest of the United States in having its obligations fulfilled and respected, being one vested in it as a sovereign, cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria,* 271 U. S. 432, 444; *Sunderland* v. *United States,* 266 U. S. 226, 232; *Bowling* v. *United States,* 233 U. S. 528, 532. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to the present action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

ARGUMENT

I

THE TRUST PATENT WHICH THE UNITED STATES ISSUED TO ISABELLE GARDEN IN 1902 CONFERRED ON HER A 25-YEAR TAX EXEMPTION WHICH COULD NOT BE REVOKED WITHOUT HER CONSENT

Petitioner stipulated in the trial court that parcel 7, allotted to Isabelle Garden by a trust patent in December of 1902, "was not legally taxable prior to the year 1928" (R. 13). And in its brief in this Court petitioner likewise concedes that the trust patents which the Government issued to

Chippewa allottees conferred on them a 25-year tax exemption of which they could not be deprived without their consent (Br. 5, 6, 19). These are necessary concessions.

In the trust patents which it granted to these Indians, the United States expressly agreed to hold their allotments in trust for a period of twenty-five years and then to convey them to the Indians in fee, "free of all charge or encumbrance whatsoever" (R. 18, 23). This provision has been uniformly construed as conferring upon the Indians a vested 25-year tax exemption, of which they cannot be deprived without their consent by either the state or the federal Governments. *United States* v. *Rickert*, 188 U. S. 432, 436, 439; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Benewah County, Idaho*, 290 Fed. 628 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55 (C. C. A. 10); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232 (C. C. A. 9); *United States* v. *Lewis County, Idaho*, 95 F. (2d) 236 (C. C. A. 9); *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733 (C. C. A. 9); *Board of Com'rs* v. *United States*, 100 F. (2d) 929 (C. C. A. 10); *United States* v. *Board of Com'rs*, 6 F. Supp. 401 (W. D. Okla.); *United States* v. *Board of County Com'rs*, 13 F. Supp. 641 (N. D. Okla.); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399 (E. D.

Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *State* v. *Ward*, 189 Okla. 532, 118 P. (2d) 216 (1941); *Iyall* v. *Yakima County*, 130 Wash. 537, 228 Pac. 513 (1924); 19 Op. A. G. 161, 166–169 (1888); 54 Int. Dec. 65 (1932); cf. *New Jersey* v. *Wilson*, 7 Cranch 164; *The Kansas Indians*, 5 Wall. 737, 760; *Carpenter* v. *Shaw*, 280 U. S. 363.

That this is the proper construction of the Government's promise to convey the allotments to the Indians "free of all charge or encumbrance whatsoever" at the end of twenty-five years seems too clear for argument. Quite obviously, the language grants the Indians a tax exemption. *The Kansas Indians*, 5 Wall. 737, 760; *United States* v. *Rickert*, 188 U. S. 432; *Carpenter* v. *Shaw*, 280 U. S. 363, 366–367. This provision, taken verbatim from Section 5 of the General Allotment (Dawes) Act of 1887, had been construed by the Attorney General in 1888 as exempting trust allotments from state or territorial taxation. 19 Op. A. G. 161, 166–169. Congress must be deemed, when it incorporated this provision in the Nelson Act of 1889, to have known of this ruling of the Attorney General and to have used the language with that gloss. *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 275–276.

And in view of its origin, it seems equally clear that the tax exemption is a vested one protected

from state or federal interference for a period of twenty-five years. *Choate* v. *Trapp*, 224 U. S. 665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; cf. *New Jersey* v. *Wilson*, 7 Cranch 164. During the negotiations with the Chippewas for a cession by them of their tribal holdings in Minnesota, the Indians were repeatedly assured that their individual allotments would be nontaxable for twenty-five years. House Ex. Doc. 247, 51st Cong, 1st sess. (Ser. No. 2747), pp. 93, 103, 104, 138 (1890). These promises were known to Congress when it accepted the lands which the various bands of Chippewas ceded to the United States (*ibid.*, pp. 1–2) and when it appropriated money for carrying out its allotment promises (Act of August 19, 1890, 26 Stat. 336, 357). The tax exemption thus conferred on the Chippewa allottees, being part of the consideration for their removal to the White Earth Indian Reservation and for their cession of tribal lands to the United States, is a property right protected by the Fifth and Fourteenth Amendments against either federal or state interference for the period therein specified, namely, twenty-five years. Having promised the Indian allottees a 25-year tax exemption, the United States is both legally and morally bound to see that its obligations are fulfilled and respected and that the Indians are not deprived of a vested 25-year tax exemption without their consent. *Choate* v. *Trapp*, 224 U. S.

665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8).

Petitioner does not disagree with the foregoing principles since it concedes that the allotment "was not legally taxable prior to the year 1928" (R. 13; Br. 5, 6, 19). It contends, instead, that the taxes collected from Isabelle Garden are not recoverable by the United States: (1) because they were "voluntarily" paid by the allottee (Br. 5, 6, 9–27); and (2) because the United States is bound by the allottee's unsuccessful attempt to recover these taxes in proceedings which she brought in the state courts in 1923 (Br. 5, 11, 27–28). Both contentions are unsound.

II

IN A SUIT BY THE UNITED STATES TO RECOVER TAXES WRONGFULLY EXACTED FROM AN INDIAN ALLOTTEE, PAYMENT UNDER PROTEST IS NOT A PREREQUISITE TO RECOVERY

Although admitting that Isabelle Garden was under no legal duty to pay taxes on her allotment prior to 1928 (Br. 5, 6, 19), it is petitioner's contention that she voluntarily relinquished her exemption and paid the taxes in order that she might become an emancipated Indian and manage her allotment as she saw fit (Br. 11–27). But that right was hers under the Clapp Amendments of 1906 and 1907, 34 Stat. 353, 1034, whether she

paid the taxes or not. *United States* v. *Waller*, 243 U. S. 452.

It is true that the original trust patent which conferred on Isabelle Garden a 25-year tax exemption likewise imposed restrictions on her right to alienate the allotment. But the Clapp Amendments, applicable to Isabelle Garden when she reached her majority in 1911, removed the restrictions on alienation. Congress there declared that "all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation * * * held by adult mixed-blood Indians, are hereby removed." The fact that the taxation provision was ineffective insofar as it attempted to subject trust allotments to taxation prior to the expiration of the 25-year period did not render void the other provisions lifting restrictions on alienation. *United States* v. *Waller*, 243 U. S. 452, 461–462; *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934). As this Court has repeatedly pointed out, exemptions from taxation and non-alienability are "two separate and distinct subjects" insofar as vested rights are concerned. *Choate* v. *Trapp*, 224 U. S. 665, 673; *Williams* v. *Johnson*, 239 U. S. 414, 420. The former is a property right protected by the Federal Constitution against either state or federal interference; the latter is an expression of legislative policy which Congress, by virtue of its

plenary power over Indian affairs, can change at will, with or without the allottee's consent. *Williams* v. *Johnson*, 239 U. S. 414, 420; *United States* v. *Benewah County, Idaho*, 290 Fed. 628, 631, (C. C. A. 9); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 401 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468, 469 (Minn.); 49 L. D. 348 (1922).

Since restrictions on alienation can be removed by legislative fiat, it follows that an Indian allotment may be unrestricted and at the same time tax exempt. Such was the situation in *Choate* v. *Trapp*, 224 U. S. 665, 669, 670, 673; *English* v. *Richardson*, 224 U. S. 680; *Carpenter* v. *Shaw*, 280 U. S. 363, 365; *Board of Com'rs of Tulsa County, Okla.* v. *United States*, 94 F. (2d) 450, 451 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635, 636 (N. D. Okla.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468 (Minn.); *Whitmire* v. *Trapp*, 33 Okla. 429, 126 Pac. 578 (1912); *Board of Com'rs of Okfuskee County* v. *Hutton*, 72 Okla. 223, 179 Pac. 922 (1919); *Grothop* v. *Stuckey*, 140 Okla. 178, 282 Pac. 611 (1929); 49 L. D. 348, 351–352 (1922); 50 L. D. 691, 693 (1924); see Act of June 28, 1898, c. 517, 30 Stat. 495, 507. Because there is nothing to prevent an allottee from simultaneously possessing an unrestricted fee and a tax immunity, it is incorrect to suggest (Br. 11–27) that Isabelle Garden voluntarily paid taxes which she did not have to pay in return for a right of alienation which she already had by reason of the Clapp Amendments.

Hence, it cannot be said that the taxes were paid by the allottee for any purpose other than to prevent her allotment from being sold for unpaid taxes. This is borne out by the fact that she herself brought suit to recover these very taxes in 1923 (R. 19–20). She was aware of the consequences of nonpayment, as well as the apparent futility of objecting to the levies. The Indians who failed to pay the taxes lost their allotments (R. 21, 23). Payments made under circumstances which prevail in these types of cases, namely, where the Indians run the risk of losing their allotments unless the taxes are paid, cannot be deemed "voluntary payments." *Ward* v. *Love County*, 253 U. S. 17, 23; *Carpenter* v. *Shaw*, 280 U. S. 363, 369; *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733, 735 (C. C. A. 9); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F (2d) 55, 57; *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *State* v. *Ward*, 189 Okla. 532, 118 P. (2d) 216 (1941). Any contention that the taxes are not recoverable because not paid under protest, formal or otherwise, is unsound because the courts have repeatedly held that "The United States is not precluded from recovering taxes paid without protest by an Indian ward." *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F.

(2d) 55, 57 (C. C. A. 10); *United States* v. *Dewey County,* 14 F. (2d) 784, 791 (S. D.), affirmed, 26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649; *United States* v. *Board of County Com'rs,* 13 F. Supp. 641, 643 (N. D. Okla.); *United States* v. *Chehalis County,* 217 Fed. 281 (W. D. Wash.); cf. *Warren* v. *County of Mahnomen,* 192 Minn. 464, 466, 257 N. W. 77 (1934).

The quotation from *Ward* v. *Love County,* 253 U. S. 17, 22, relied upon by petitioner (Br. 7, 21), is unduly abbreviated. This Court went on to state in that case that since a federal exemption was involved the question whether the taxes were paid voluntarily or exacted by coercion was a federal one, and that the Oklahoma Supreme Court's determination that the taxes were paid voluntarily was without any fair or substantial support (253 U. S. at pp. 22–23). It is to be noted further that the United States was not the party plaintiff in that case. Local statutes of limitation, statutes governing protests, etc., are not applicable when suit is brought by the United States in its sovereign capacity to vindicate a federal policy. Cf. *United States* v. *Chehalis County,* 217 Fed. 281, 285 (W. D. Wash.); *United States* v. *Dewey County,* 14 F. (2d) 784, 791 (S. D.), affirmed, 26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649. Where a federal right is involved and the United States is the party plaintiff, "money got through imposition" may be recovered back,

whatever be the state law. Cf. *Ward* v. *Love County*, 253 U. S. 17, 24.[4]

III

IT IS IMMATERIAL THAT THE SUIT WAS NOT BROUGHT AND THAT SOME OF THE TAXES WERE NOT PAID UNTIL AFTER THE EXPIRATION OF THE 25-YEAR PERIOD

Petitioner contends that the United States may not bring suits on behalf of Indian allottees after

[4] Although petitioner twice mentions the fact that a fee patent was issued to Isabelle Garden on December 8, 1919 (Br. 2, 3), no contention is made that the patent rendered the land taxable (R. 13), inasmuch as it was issued without any application on the part of the allottee (Br. 3). Consequently, cases like *Street* v. *Schock*, 245 U. S. 192, and *Fink* v. *County Commissioners*, 248 U. S. 399, are not applicable (cf. Br. 24). The Department of the Interior caused the fee patents to be issued for two reasons: (1) to keep the records straight (see *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934)), inasmuch as Congress had already granted a fee by legislative fiat; and (2) because in 1919 the Department of the Interior was enforcing a "Declaration of Policy" which called for the immediate discontinuance of federal guardianship over all competent Indians (those of one-half or less Indian blood). Report of the Commissioner of Indian Affairs, 1917, pp. 3, 5; *ibid.*, 1918, p. 22. This policy, because of its disastrous consequences, was abandoned shortly after 1920. *Ibid.*, 1926, p. 10; see also Annual Report, Secy. Int. 1920, p. 9; *ibid.*, 1921, p. 54.

Since the allotment here involved was not held in a trust status on the date the confirmatory fee patent was issued to Isabelle Garden in 1919, the Secretary of the Interior has ruled that the Act of June 11, 1940, 54 Stat. 250, providing for the reimbursement by the United States of Indians for taxes paid on their allotted lands in certain circumstances, as amended by the Act of February 10, 1942, 56 Stat. 87 (25 U. S. C. A. 352c), is not applicable to the facts of this case.

the expiration of the trust periods and after their emancipation (Br. 25–26). In the trust patent which it issued to Isabelle Garden in 1902, the United States agreed to convey the allotment to her at the end of twenty-five years "free of all charge or encumbrance" (R. 18, 23). Any taxes which were assessed prior to 1928 and which the allottee had to discharge then or thereafter, in order to obtain a free and unencumbered title, were unlawful exactions and impinged upon the allottee's vested tax exemption. Since the taxes should not have been levied, it makes no difference whether they were actually paid before or after the expiration of the 25-year period. As the Eighth Circuit observed in *Morrow* v. *United States*, 243 Fed. 854, 859, "The instant case is not one depending upon governmental wardship over a dependent and inferior people, but is based upon the legal relation of trusteeship, and springs from the obligation contained in the terms of the trust to preserve the land, so that at the end of the trust period it can be passed to the beneficiary 'free of all charge or incumbrance.'" See also *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (W. D. Wash.).

It is the Government's right and duty to have its consensual obligations properly discharged and its declared policies fully respected. To this end, it may invoke the aid of the courts "in removing

s to the fulfillment of its obli-
l States v. *Minnesota*, 270 U. S.
States v. *Rickert*, 188 U. S. 432,
ty, Okl. v. *United States*, 123 F.
. 10), certiorari denied, 315 U. S.
of the United States in having
l policies observed "is one which
a sovereign." *United States* v.
S. 181, 194.

he United States to have its
immunity respected is a con-
even though the allottees have
e restrictions on alienation have
l the Indians have been other-
l from a wardship status.
l States, 261 U. S. 219, 232;
d States, 224 U. S. 413, 437;
l. v. *United States*, 123 F. (2d)
certiorari denied, 315 U. S. 819;
f Tulsa County, Okl. v. *United*
450, 452 (C. C. A. 10); *United*
e Mercantile Co., 68 F. (2d)
9). The *Bryan County* case,
n point. There the tax exemp-
pired, the allottees had become
had even assigned their tax
arty. The United States was,
d to maintain the suit and to
which the county had wrong-
the allottees. In this connec-

tion, it is to be remembered that an Indian may be emancipated for some purposes and not for others. *United States* v. *Waller*, 243 U. S. 452, 459–460; *United States* v. *Nice*, 241 U. S. 591, 598; *United States* v. *Sherburne Mercantile Co.*, 68 F. (2d) 155, 158. (C. C. A. 9).

IV

THE UNITED STATES IS NOT BOUND BY THE ALLOTTEE'S UNSUCCESSFUL ATTEMPT TO RECOVER THE TAXES IN THE STATE COURT

The interest of the United States in having its obligations and policies respected, being one which is vested in it as a sovereign (*United States* v. *Minnesota*, 270 U. S. 181, 194), cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria*, 271 U. S. 432, 444; *Sunderland* v. *United States*, 266 U. S. 226, 232; *Privett* v. *United States*, 256 U. S. 201, 204; *Bowling* v. *United States*, 233 U. S. 528, 534. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to this action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. Here again the *Bryan County* case is squarely in point. There the allottees assigned their tax-refund claims to one Broadwell who brought suit to recover the taxes in the state courts of Okla-

homa. The suit was defeated by a plea of limitations. *Broadwell* v. *Board of Com'rs of Bryan County,* 88 Okla. 147, 211 Pac. 1040 (1922), certiorari denied, 262 U. S. 750. But that judgment did not prevent the United States from subsequently recovering those taxes in its own courts. *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the circuit court of appeals should be affirmed.

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APRIL 1943.

APPENDIX

Section 5 of the General Allotment (Dawes) Act of February 8, 1887, c. 119, 24 Stat. 388, 389, provides:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. * * * (25 U. S. C. 348.)

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * *

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in sever-

> alty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; * * *.

The first Clapp Amendment of June 21, 1906, c. 3504, 34 Stat. 325, 353, provides:

> That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The second Clapp Amendment of March 1, 1907, c. 2285, 34 Stat. 1034, provides:

> That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby de-

cleared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

U. S. GOVERNMENT PRINTING OFFICE: 1940

SUPREME COURT OF THE UNITED STATES.

No. 684.—October Term, 1942.

County of Mahnomen, a Municipal Corporation, Petitioner, vs. The United States of America. | On Writ of Certiorari to the United States Circuit Court of Appeals for the ~~Ninth~~ Eighth Circuit.

[June 7, 1943.]

Mr. Justice Black delivered the opinion of the Court.

This action was brought by the government in a federal district court to recover real estate taxes alleged to have been illegally collected by Mahnomen County, Minnesota, from Isabelle Garden, an Indian allottee.[1] The suit, brought in 1940, seeks a refund of taxes for the years 1911 to 1927 inclusive. It is conceded that any limitation on the County's power to tax expired in 1928 with the termination of the twenty-five year trust described below. The District Court rendered judgment against the County for the years 1911 to 1921, inclusive, giving a total judgment of $405.97. On appeal by both the government and the county, the Circuit Court of Appeals affirmed but gave an added judgment for the years 1922 through 1925. 131 F. 2d 936.

In its petition for certiorari, the county claimed that Garden was an emancipated Indian who had paid the taxes voluntarily, and that hence the judgment granting a refund conflicts with *Ward* v. *Love County*, 253 U. S. 17. The county also contended that it was wholly within an Indian reservation; that it had long been dependent on taxation of allotted lands; that after the passage of the first Clapp Amendment in 1906, 34 Stat. 325, 353, which emancipated the Mahnomen County Indians, and lifted "all restrictions as to the sale, incumbrance, or taxation for allotments", the County had assumed that the Indians could voluntarily contribute to the support of County institutions; and that while the instant judgment is small, the aggregate amount of such judgments which might be obtained in similar actions would adversely affect the solvency of the County and imperil the continuance of county institutions. On these representations of the public importance of the case, we granted certiorari. — U. S. —.

[1] The government's original complaint included additional claims against Mahnomen and other counties, but these other claims are not involved in the case as it reaches us.

In 1902, the Secretary of the Interior, acting under Congressional authority, issued a patent to this Indian allottee, agreeing to hold a tract of land in trust for twenty-five years "for the sole use and benefit of the Indian" and then to convey the land to her "discharged of said trust and free of all charge or incumbrance whatsoever."[2] Indian land so held by the government has been said to be exempt from all State taxation. *United States* v. *Rickert*, 188 U. S. 432, 436-438. The first and second Clapp Amendments, passed in 1906 and 1907[3] lifted restrictions previously imposed upon the sale, encumbrance and taxation of the allotments of adult mixed-blood Indians, and in addition declared that "the trust deeds heretofore or hereafter executed by the Department for such allotments, are hereby declared to pass the title in fee simple." Garden is an adult mixed-blood Indian and has been an adult since 1917, when the first controverted tax payment was made. These amendments evidence "a legislative judgment that adult mixed-blood Indians are in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands." *United States* v. *Waller*, 243 U. S. 452, 462; *Baker* v. *McCarthy*, 145 Minn. 167, 170.

Notwithstanding these acts the County concedes and we assume arguendo, that it was without power to impose a tax upon these allotted lands prior to 1928 against the consent of the Indians. *Choate* v. *Trapp*, 224 U. S. 665.[4] The Clapp Amendment gives the consent of the United States to state taxation, thus removing the barrier to taxation found to exist in *United States* v. *Rickert*, *supra*; but under *Choate* v. *Trapp*, the Indian, who has gained a "vested right" not to be taxed, must also consent. Acceptance of *Choate* v. *Trapp* does not mean that an Indian, legislatively declared to be competent to handle his own affairs, cannot voluntarily decide to pay taxes for his own advantage and welfare. If, as the petitioner argued, and as the government does not deny, the capacity of the County to provide schools, roads, and other necessary services would have been seriously

[2] 24 Stat. 388, 389; 25 Stat. 642.

[3] 34 Stat. 325, 353; 34 Stat. 1034.

[4] We do not consider whether Choate v. Trapp is controlling here. In that case the government had patented land with a provision that "the land should be non taxable" and the agreement with the Indians was held to be a contract which "having been accepted by the State of Oklahoma in its Constitution upon admission to statehood, was a limitation upon the taxing power of the State." Carpenter v. Shaw, 280 U. S. 363, 366.

jeopardized, if not destroyed, by the failure of the Indians to contribute to a tax fund, their newly granted emancipation would have been of little value. In addition, the market value of their lands would have been greatly reduced by the complete inability of the County to secure funds essential to the establishment of means of travel and communication and the maintenance of an orderly society. Nothing that was said in *Choate* v. *Trapp*, or in any other decision of this Court, deprived an emancipated Indian of freedom voluntarily to pay taxes in his own interest. *Ward* v. *Love County*, 253 U. S. 17, 22, assumed that the test of the right to recover a tax illegally collected from an Indian is whether the tax was paid voluntarily, and that the burden is upon one seeking recovery of the tax to establish that the payment was made involuntarily. The issue before us, therefore, is whether the government has sustained that burden.

There is no allegation, stipulation, or finding by either court that these taxes were involuntarily paid. Both courts below erroneously assumed that the government's original obligation to hold the land in trust and deliver it free of encumbrances permits the government to maintain this suit even though the Indian has willingly paid taxes. 1911-1921 taxes were evidently paid without protest, and there is nothing in the record to permit a deduction that the payments were involuntary.[5]

The 1922-25 taxes were discharged in somewhat different fashion. The allottee became delinquent in the payment and the lands were sold to the State. Subsequently, in 1936, she made a compromise arrangement with the State, for a period including not only the years 1922-27, for which tax exemption is claimed, but also for the years 1928-34, for which there is no conceivable claim of exemption. This compromise, made in the form of purchase of two tax certificates for the allottee, resulted in payment by Garden for the entire 1922-34 period of *less* than the amount of the 1928-34 taxes. The compromise, made at a time when the Indian was fully as free as any other citizen, was, in the words of the District

[5] In 1923 Garden sued in a state court for recovery of her 1911-1921 taxes. A demurrer was sustained in the trial court and no appeal was taken. The record does not show that she had made the tax payments under protest, which would probably have entitled her to recovery under state law according to the doctrine of Warren v. Mahnomen County, 192 Minn. 464. This action, brought after the tax benefits had been enjoyed, is no indication that she did not originally pay the taxes willingly in order to enjoy the benefits of county government. We need not consider the contention of the County that the 1923 action is res adjudicata. Cf. Bryan County v. United States, 123 F. 2d 782.

Court, a "voluntary action and election of the allottee to proceed in a manner which she deemed wise and prudent." It resulted in a net saving to the allottee of $66.42 for the taxable years 1928-1934.[6] The voluntary nature and the fairness of the 1936 settlement are further indicated by the fact that the County, in its answer to the complaint, has declared its willingness to refund the sum paid in settlement in order that it may relevy the taxes for the years 1928 and 1934 and thus collect the taxes which Garden admittedly owed.

The allottee paid the 1911-21 taxes voluntarily and settled the balance of her taxes to her advantage in 1936. Neither Minnesota law[7] nor federal law[8] requires that a county refund taxes which an emancipated Indian has voluntarily paid. The County is entitled to judgment in its favor.

Reversed.

Mr. Justice FRANKFURTER and Mr. Justice RUTLEDGE concur in the result.

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[6] The parties have entered the following stipulation as to the payment of these taxes: "That said taxes for the years 1922 and 1927, both inclusive, were paid and discharged by the said allottee by the purchase by her of State Assignment Certificate No. 76 in the amount of $33.22 covering the taxes for the years 1922 to 1925, both inclusive, and State Assignment Certificate No. 232 in the amount of $145.93 covering taxes for the years 1926 to 1934, both inclusive, all pursuant to Chapter 387 Laws of Minnesota for 1935, that the aggregate for said State Assignment Certificates is the sum of $179.15 and that the valid taxes for the years 1928 to 1934, both inclusive, thereby discharged amounted to $245.57 without penalty or interest and that therefore said allottee effected a saving of $66.42 plus penalty and interest by the purchase of said State Tax Assignment Certificates."

The government in effect concedes the merit of the argument that the 1936 settlement was a fair and voluntary compromise but seeks to avoid its force by an assumption that the two tax certificates are to be treated in different fashion. As the stipulation makes clear, Certificate Number 76 formally covers the years 1922-25, and No. 232 covers the years 1926-34. In view of the substantial benefit received by the allottee from the compromise, the government has waived its claim for any refund for the years 1926-27, but it apparently assumed that Certificate No. 76 was unrelated to this compromise. However, both Certificates were purchased at the same time, both covered the same lands, and each would be worthless without the other since the Minnesota law under which the arrangement was made is aimed at the settlement of all delinquent taxes. C. 387, Minn. Laws, 1935; Minn. Stat. (Henderson, 1941), § 280.11-13; *cf.* Security Trust Co. v. Heyderstaedt, 64 Minn. 409. The reason for the use of two certificates, one for the years prior to 1925 and the other for the years thereafter, may have resulted from the fact that the Minnesota statute applies different standards of value to compromises of taxes delinquent prior to 1925 and those delinquent thereafter. As is indicated by the stipulation, the transaction for the two certificates was considered as a unit and is in fact one compromise, termed by the trial judge a settlement for a "lump sum".

[7] Falvey v. Board of County Commissioners, 76 Minnesota 257; Warren v. County of Mahnomen, *supra.*

[8] Ward v. Love County, *supra*; Carpenter v. Shaw, 280 U. S. 363.

Mr. Justice MURPHY, dissenting.

I dissent because the Court today takes too narrow a view of our obligations to our Indian citizens—obligations engendered by a history marked at times with trespass, depredation and corruption, and by the concomitant necessity of aiding and protecting a people once dependent and unlearned in our ways during their difficult period of transition from that situation to the assumption of civic responsibilities and assimilation into the mass of our citizenry.

The assumptions which the opinion of the Court makes regarding the tax status of Isabelle Garden's allotted land but state the applicable law. The land which she received in 1902 under a trust patent, issued pursuant to the Nelson Act (25 Stat. 642) and the General Allotment Act (24 Stat. 388), was exempt from state and local taxation for a period of 25 years, or until 1928. *United States* v. *Rickert*, 188 U. S. 432; *Board of Commissioners* v. *Seber*, — U. S. —, No. 556 this Term. Since the tribe to which she belonged gave up its extensive holdings after assurances that the forthcoming allotments would be non-taxable for 25 years,[1] this tax exemption was a vested right of which she could not be deprived without her consent. *Choate* v. *Trapp*, 224 U. S. 665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363. Consequently, although Isabelle Garden upon reaching her majority in 1911 became emancipated by virtue of the Clapp Amendments of 1906 and 1907 (34 Stat. 353, 1034), that legislation did not disturb her vested tax exemption.

The Court's reliance upon *Ward* v. *Love County*, 253 U. S. 17, as the basis for its decision with regard to the 1911-21 taxes paid by Isabelle Garden is unwarranted. In that case it was assumed that an emancipated Indian possessing a vested tax exemption could not recover back taxes illegally assessed but voluntarily paid. 253 U. S. at 22. But that case did not hold, as the Court now asserts that it did, that the burden was on the Indian claimant to establish the involuntary character of the payment. Still less, since the United States was not a party, did it consider what the rights of the United States would be should it bring suit on behalf of the Indian. That is the instant question, and while it is ordinarily true that the burden of demonstrating the illegality of a

[1] House Ex. Doc. 247, 51st Cong., 1st Sess. (Ser. No. 2747), pp. 93, 103, 104, 138 (1890). See also Morrow *v.* United States, 243 Fed. 854.

collected tax and compliance with the statutory requirements for refund are upon the taxpayer seeking recovery, strong reasons of policy suggest an opposite rule should prevail in this case. While "emancipated" upon attaining twenty-one, Isabelle Garden was an Indian "just emerging from a state of dependency and wardship", *Ward* v. *Love County, supra,* at p. 23, and the United States had the right, if not the duty, to enforce for her benefit its guarantee of tax immunity even though she was a citizen, the restrictions on her property were removed, and she was otherwise emancipated from a wardship status. Cf. *Cramer* v. *United States,* 261 U. S. 219, 232; *Heckman* v. *United States,* 224 U. S. 413, 437; *United States* v. *Minnesota,* 270 U. S. 181, 194. To hold that the United States is foreclosed by action which Isabelle Garden may have taken or failed to take in ignorance of her legal rights is to hinder the United States in the performance of its considered policy of protection and to deprive her indirectly of that which she could not directly be deprived—her vested tax exemption. Without legal right the County placed her tax exempt property upon its tax rolls immediately upon her reaching adulthood, assessed it, and she paid the taxes under circumstances not fully disclosed. In this situation it is only fair to put the burden on the County, whose unauthorized action brought it about, of establishing that she paid the taxes of her own free will with full knowledge of her legal rights. A contrary rule fails to take into account the long and not altogether creditable history of our relations with the Indians and the obligations we owe to those people to protect them in their rights.

Apart from the question of burden of proof, however, I cannot agree with the opinion of the Court. The crucial issue with regard to the 1917-21 taxes is assumed to be the voluntary or involuntary character of those payments. The trial court admittedly made no findings on this issue and in the absence of such findings, the proper procedure would be to remand the case to the trial court. Cf. *Seminole Nation* v. *United States,* 316 U. S. 286, 300. But if we are to decide the case here by indulging in presumptions, I think the only tenable assumption is that the payments were made under compulsion. Isabelle Garden's land was assessed immediately after she became twenty-one, and she ran the risk of losing it unless she paid the taxes. The record shows that some of the Indians, originally included in this action, who failed to pay their taxes did lose their allotments. On the record

it cannot be said with certainty that Isabelle Garden paid the taxes for any other purpose than to prevent her allotment from being sold for unpaid taxes. This is borne out by the fact that she herself brought suit in 1923 to recover the 1911-21 taxes.[2] Suggested reasons for finding that the payments were voluntary are without substance. Isabelle Garden did not have to pay those taxes for the privilege of managing her allotment as she wished. That right was hers under the Clapp Amendments which were competent to remove the restrictions upon her land, but not the vested tax immunity. Cf. *Choate* v. *Trapp*, *supra*, p. 673. And there is nothing in the record, apart from argument contained in the County's unsuccessful motion for a new trial, to support the assumption that she voluntarily paid the taxes to enjoy the benefits of County government. Payments made under circumstances such as this, where an exempt Indian runs the risk of losing her allotment unless the taxes are paid, should not be considered voluntary payments. Cf. *Ward* v. *Love County*, *supra*, p. 23; *Carpenter* v. *Shaw*, 280 U. S. 363, 369.

Finally, I cannot assent to the proposition that since Isabelle Garden settled her taxes for 1922 through 1934 for less than the amount she owed for taxes validly assessed for the period beginning in 1928 when her land became taxable, the United States cannot recover for her the amounts she paid to discharge the 1922-25 taxes. Those taxes were discharged in 1936 by the purchase of State Assignment Certificate No. 76. At the same time the taxes for 1926-34 were discharged by the purchase of another assignment certificate. The fact, unexplained by the stipulation, that two certificates were used to discharge the taxes suggests that there was no relation between the discharge of the 1922-25 taxes and the settlement of the admittedly due taxes for 1928-34. But even if a relation is assumed, the United States should still be allowed to recover the amount paid for Assignment Certificate No. 76. Isabelle Garden probably would have been able to compromise her 1928-34 taxes even more advantageously if the County had not asserted its unwarranted claims for the years 1922-25

[2] This unsuccessful suit is no bar to the present action by the United States. The interest of the United States in having its obligations and policies respected cannot be defeated by judgments in actions to which it is not a party. United States v. Candelaria, 271 U. S. 432, 443-44; Sunderland v. United States, 266 U. S. 226, 232; Privett v. United States, 256 U. S. 201, 204; Bryan County, Okl. v. United States, 123 F. 2d 782.

during which period the property was still tax exempt. That is sufficient to warrant recovery of the amount paid for Assignment Certificate No. 76 in discharge of the 1922-25 taxes.[3]

[3] This analysis also indicates that the portion of the assignment certificate covering the period 1926-34 which discharged the taxes levied for 1926 and 1927 should be returned. The Government, however, presses no claim for these amounts here.